United Nations A/C.3/61/SR.27

General Assembly
Sixty-first session

Official Records

Distr.: General
17 November 2006

Original: English

Third Committee

Summary record of the 27th meeting
Held at Headquarters, New York, on Monday, 23 October 2006, at 11 a.m.

Chairman: Mr. Al Bayati ..... (Iraq)

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* Items which the Committee has decided to consider together.

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06-58237 (E)

The meeting was called to order at 11 a.m.

Agenda item 67: Promotion and protection of human rights (*continued*) (A/61/36, A/61/97, A/61/220 and A/61/280)

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/61/211, 267, 281, 287, 289, 306, 311, 312, 324, 325, 338, 340, 348, 352, 353, 384, 464, 465, 476, 506 and 513)

(c) Human rights situations and reports of special rapporteurs and representatives (*continued*) (A/61/259, 276, 349, 360, 369 and Corr.1, 374, 469, 470, 475, 489, 504 and 526)

1. **Ms. Jilani** (Special Representative of the Secretary-General on Human Rights Defenders), introducing her report (A/61/312), said that its main focus was the right to freedom of assembly in relation to activities carried out by human rights defenders. To date, she had addressed 253 communications to governments regarding situations in which defenders had been denied the freedom of assembly or harmed while exercising that freedom. She was greatly troubled by the rising number of incidents which indicated an excessive and often indiscriminate use of force against defenders exercising their right to peaceful assembly, which was protected by several international and regional treaties and conventions, as well as by most national constitutions. There had also been incidents in which the authorities had used undercover personnel to instigate violence in peaceful assemblies in order to justify using violent means to disperse the assembly or to arrest people. She also highlighted, inter alia, paragraphs 53 to 60 and noted that, while all defenders were potentially vulnerable, women human rights defenders and those working specifically for the rights of lesbian, gay, bisexual and transgender persons had faced violence by state agencies and non-state actors in the exercise of the freedom of assembly. Their protection should receive more attention.

2. She urged States to increase efforts to provide conditions that would be conducive to activities for the defence of human rights. The situation presented in her report would not improve without a stronger commitment of governments and the international community towards enforcing respect for collective action for the promotion and protection of human rights.

3. **Mr. Llanos** (Chile) wondered whether the system for the protection of human rights defenders had the capacity to deal with violations committed by non-State actors. Noting that the general comments of the Human Rights Committee did not include any reference to article 21 of the International Covenant on Civil and Political Rights, which recognized the right of peaceful assembly, he asked whether it would be useful to the mandate of the Special Representative for the Human Rights Committee to draft a general comment on article 21 of the International Covenant. Would that help to remedy the apparent omission of provisions regarding non-State actors?

4. **Mr. Amorós Núñez** (Cuba) said that individuals who received large sums of money from a foreign Government to defend the policies of that Government and who openly opposed the application in their own country of the principle of territorial integrity and the right to self-determination could hardly be called defenders of human rights. The report of the Special Representative took the approach that such people were considered defenders of human rights. He wanted to know why the Special Representative did not also deal with the responsibilities of individuals who worked to protect and promote human rights.

5. **Ms. Leikas** (Finland), speaking on behalf of the European Union, asked how networks of national and international civil society organizations could be supported and strengthened by the United Nations. Also, the European Union had noted with concern the increase in prosecutions and convictions of human rights defenders on false and trumped-up charges which had nothing to do with their political activities. What could be done to monitor such trials in a more effective way?

6. **Ms. Ajamay** (Norway) said that her delegation wished to encourage the Special Representative to continue focusing, through the complaints procedures, on violations against defenders working on the rights of lesbian, gay, bisexual and transgender persons, and of women defenders. The Special Representative had pointed out that she did not have the capacity to ensure proper follow-up in those cases. Her delegation would welcome her views on how special procedures could be strengthened and how cooperation between special

procedures and the Human Rights Council could be enhanced.

7. **Ms. Filotas** (Canada), noting that violations of the right to assembly were often a barometer indicating the general atmosphere with regard to human rights, asked how an assessment of the situation of human rights defenders could be used as part of an early warning system.

8. **Ms. Fontana** (Switzerland) asked whether a more consistent and specific policy on the protection of freedom of expression of human rights defenders could be developed, especially in the framework of country teams working with United Nations programmes and United Nations offices around the world.

9. **Mr. Babadoudou** (Benin) said that in recent years, his country had had to deal with the problem of the freedom of assembly of human rights defenders. It was easy to talk about freedom of expression, but in real life, the situation was not as straightforward as some might think. There was often a very thin line between freedom of assembly and vandalism, between freedom of expression and defamation. Journalists must be responsible for what they said.

10. **Mr. Prabowo** (Indonesia) said that his Government looked forward to receiving a visit from the Special Representative in the near future. There was a need for cooperation in capacity-building for law enforcement authorities in developing countries. He would like to hear the views of the Special Representative in that regard.

11. **Mr. Ceinos-Cox** (United States of America) asked what recommendation could be made to States, the international community and non-governmental organizations to address the problem of impunity of government officials, in particular those who violated the rights of human rights defenders.

12. **Ms. Jilani** (Special Representative of the Secretary-General on Human Rights Defenders) said that the Chilean delegation's concern regarding the accountability of non-State actors had been addressed to some extent by enforcing the concept of State responsibility. That was linked to the question of impunity that had been raised by the United States representative. Where States had failed to hold non-State actors responsible for their human rights violations, especially against human rights defenders, impunity had become a cycle that was difficult to break. Impunity was symptomatic of a weak institutional system. A government's political will must be matched by its efforts to strengthen its institutions. Impunity was one of the major issues she had highlighted in her first report, submitted in 2001. She agreed that it was important to receive guidance from the Human Rights Committee, especially with regard to article 21 of the International Covenant on Civil and Political Rights.

13. Regarding the comments made by the representative of Cuba, she said that those who took up the cause of human rights defence and promotion did so from commitment and not from any mercenary motive; nevertheless, many genuine human rights defenders had undeservedly been charged with all kinds of false motives. Persons who did not act in good faith or who were motivated by any consideration other than the promotion of human rights would not qualify as human rights defenders. Civil society had the right and the responsibility to promote and protect human rights and democracy, not undermine them.

14. She thanked the European Union for the guidelines on human rights defenders, which were helping to develop a culture that would be conducive to implementation of the Declaration on Human Rights Defenders. She too was worried about the use of judicial procedures to prosecute human rights defenders and felt that the international community had a responsibility to ensure that the trials were monitored. She hoped that many of the standards that were already in place in international instruments could be enforced in cases where human rights defenders were undergoing trial and that the international community's legitimate concern on observation of trials would be met by the countries concerned.

15. She hoped that every mandate that was being implemented would have the kind of support that was needed to follow up on recommendations. It was her responsibility to make recommendations, but many agencies in the United Nations system, the international community and the regional bodies also had a responsibility for following up on recommendations. As noted in her report, the interest of a Government in issues relevant to her mandate was keenest during and immediately following the mission; hence, time was of the essence. She needed resources and support to enable her to carry out timely follow-up visits. It would also be very helpful for regional groups to meet with her to discuss regional trends. Sometimes

it was better to follow a regional approach in order to influence specific countries.

16. All Special Rapporteurs and special procedure mechanisms brought forth information which, if properly weighed, would clearly provide early warning signs. In the case of human rights defenders, in particular, the situations that were brought to the attention of the Human Rights Council or the General Assembly reflected a human rights context that could be viewed as early warning signs of the context in which human rights defenders were working.

17. The cumulative work done under her mandate should be analysed with a view to developing a specific strategy for the protection of human rights defenders, based on the experiences and preferred practices followed by countries. Several countries had taken measures to create internal mechanisms in support of external and regional initiatives. The work should be ongoing until the strategy was widely recognized as indispensable for all States to implement with respect to their domestic or international policy.

18. She understood some of the concerns expressed by the representative of Benin. Nevertheless, it must be borne in mind that actions of human rights defenders, which were often a consequence of a government's lack of tolerance of criticism, should not be characterized as vandalism or defamation if there was an element of constructive criticism in the use of the freedom of expression and assembly by the human rights defenders. Governments must be aware that how they responded to criticism and exposure of human rights violations was the key to making such criticism constructive. Where governments had not responded or had failed to take criticism in the spirit in which it had been made, tensions had emerged.

19. She thanked the Government of Indonesia for its invitation, and hoped to be able to undertake the visit soon. She was keen on building capacity to enable law enforcement personnel not only to recognize human rights activity but also to fully respect it. She hoped that better cooperation between the Government of Indonesia and the Office of the United Nations High Commissioner for Human Rights would help law enforcement and other authorities to recognize and protect human rights activities.

20. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), introducing his report (A/61/259), expressed surprise at the lack of awareness among domestic law enforcement officials and politicians that torture constituted one of the most serious human rights violations. All 141 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had undertaken to criminalize torture as defined in article 1 by creating one or more specific offences in their criminal codes. However, passing laws, like ratifying treaties, was just the beginning. The real commitment of States was demonstrated by the implementation of the treaties they had ratified. The main reason why torture continued to be practised in many countries and regions was the lack of effective investigations of allegations of torture and prosecutions of public security officials, as well as redress for victims. Governments must embrace efforts to eradicate that abhorrent practice.

21. Turning to country visits, he commended Georgia, Mongolia, Nepal and the People's Republic of China for the cooperation they had extended to him during his visits to those countries in 2005 and the continuing constructive dialogue in the follow-up to his recommendations. Paragraphs 6 to 12 of the report contained details of his visit to Jordan in June 2006. He had cancelled his scheduled visit to the Russian Federation in October 2006 shortly before it began upon being informed by the Russian Government that some elements of the terms of reference for visiting detention facilities would contravene Russian legislation. Yet those terms had been outlined to the General Assembly and the Human Rights Council beforehand and had governed the country visits of his predecessor and his own visits the previous year to that country. He had been assured by the Government that a mutually agreeable solution would be arrived at to ensure that the mission could soon proceed. In a tragic twist of fate, the scheduled starting date for his mission had coincided with the murder of Russian journalist and human rights defender, Anna Politkovskaya, who had documented the war in Chechnya and the human rights violations taking place there, including torture and ill-treatment. Other country visits were scheduled for Paraguay later in 2006 and for Sri Lanka, Nigeria and Togo in 2007. He also hoped to receive an invitation from Indonesia for a mission to that country in 2007.

22. The best way to combat torture was to focus on prevention. To be effective, prevention measures must

be carried out locally by independent national institutions. Therefore, many of his activities had been directed towards promoting ratification of the Optional Protocol to the Convention against Torture. He then referred to paragraphs 74 and 75 of his report, which contained it conclusions.

23. Anti-torture measures and initiatives were often more timely and responsive at the regional level. Much of his work was therefore devoted to building partnerships with regional human rights organizations. His activities in that area included advocacy of anti-torture measures, meetings, workshops, training, information exchange and coordination of future activities, all aimed at mutually reinforcing human rights mechanisms. While cooperation with European regional organizations had made up a large part of those activities, he had also sought to strengthen ties with the Organization of American States and the African Union. He had been invited to participate in the 40th ordinary session of the African Commission on Human and Peoples' Rights in November 2006.

24. **Mr. Amorós Núñez** (Cuba) asked whether, in the opinion of the Special Rapporteur, the anti-terrorism legislation passed by some countries actually amounted to their condoning torture.

25. **Ms. Ajamay** (Norway) said that article 15 of the Torture Convention was fundamental for the credibility of the efforts to eradicate torture. However, it was difficult to tell whether a statement had been derived from torture. She asked whether the Special Rapporteur had discussed his approach with the United Nations Committee against Torture to ensure that they did not have competing interpretations of the burden of proof.

26. **Mr. Vohidov** (Uzbekistan) noted that the legislative and administrative measures introduced by his Government pursuant to the recommendations of the 2002 report of the Special Rapporteur on torture (E/CN.4/2003/68) had already resulted in the prosecution of more than 100 law enforcement officials for the use of torture, while the number of cases being investigated by the ombudsman had been reduced by half, yet the Special Rapporteur continued to criticize his country for the systematic use of torture. He wondered how the "systematic use of torture" was defined.

27. **Ms. Filotas** (Canada) asked whether the Special Rapporteur was still receiving information on gender-related acts and whether he had plans to devote greater attention to gender issues.

28. **Ms. Leikas** (Finland), speaking on behalf of the European Union, wished to know how the European Union could assist the Special Rapporteur in securing invitations for country visits and respect for his terms of reference. She wondered how overlaps could be avoided in the activities of different human rights bodies and how the problem of communications with Governments being "one-sided affairs" could be remedied.

29. **Mr. Kim** Pil-woo (Republic of Korea) said he shared the Special Rapporteur's concern that some countries were attempting to question the absolute nature of the prohibition of torture. A strong mandate for the Special Procedures as well as the universal periodic review currently being discussed by the Human Rights Council would help promote human rights, and particularly the eradication of torture.

30. **Ms. Tchitanava** (Georgia) said that her Government was making efforts to implement the Special Rapporteur's recommendations including by ratifying the Optional Protocol to the Torture Convention, recognizing the competence of the Committee against Torture to consider complaints and amending the Criminal Code to bring the definition of torture into line with the Convention. Furthermore, special cameras had been installed at all new prisons as a monitoring mechanism while a national plan was being drafted to make Georgia a "torture-free zone".

31. That goal could not be fulfilled in the secessionist regions of South Ossetia and Abkhazia, however. Violations of basic human rights including murders or disappearances of civilians were taking place in a zone that was under the responsibility of Russian peacekeepers, who were doing virtually nothing to stop them. The death penalty, which had been abolished in Georgia in 1997, was still in force in Abkhazia. Only with the assistance of the international community and non-governmental organizations would it be possible to monitor and improve the situation in the conflict zones.

32. **Mr. Aksen** (Turkey) said that United Nations mechanisms such as treaty bodies or special rapporteurs often ignored the work of regional organizations. Furthermore, when they took a different approach from that of regional organizations, States were placed in a difficult position. He wondered whether the Special Rapporteur could elaborate further

on his cooperation with regional organizations and whether he had any recommendations on how the situation might be improved for his own mandate and for other mandate holders.

33. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment), in reply to the representative of Cuba, said that, while the concept of human rights must necessarily be flexible in the fight against terrorism, some rights were absolute, including the prohibition against torture. While counter-terrorism measures were necessary, legislation in that area — and associated interrogation methods and secret places of detention — must not restrict that absolute prohibition. Governments must not resort to diplomatic assurances in the context of torture; in so doing they undermined the absolute prohibition against *non-refoulement*. He expressed concern at any laws being enacted by governments that might lead to a more narrow interpretation of torture than the definition contained in article 1 of the Torture Convention, and which might authorize interrogation methods that would amount to torture or other cruel, inhuman or degrading treatment or punishment. It was important not to make exceptions of that kind, with the justification of the "ticking bomb scenario".

34. In response to the representative of Norway, he recalled the German and United Kingdom judgments referred to in his report, in which he felt that the necessary consequences of article 15 of the Torture Convention had not been sufficiently taken into account. In the light of well-founded allegations of torture under article 15 of the Torture Convention, the burden of proof must shift to the State to establish that evidence invoked against an individual had not been obtained under torture. His approach to the interpretation of article 15 was consistent with that of the Committee against Torture, as it was on other controversial issues such as the use of diplomatic assurances.

35. In reply to the representative of Uzbekistan he said that caution was necessary in defining the systematic practice of torture, but that particular inspiration could be drawn from resolutions 1503 and 1235 of the Economic and Social Council; case law; and article 3 of the Torture Convention. The "systematic" practice of torture did not necessarily mean that it occurred as part of Government policy: the term could be used if acts of torture were widespread, well known, and the Government was not taking sufficient remedial action. In his country reports, he had only used that definition once, to date, in relation to Nepal; however, the situation in that country had since improved.

36. Responding to the comments of the representative of Canada, he expressed concern that the vast majority of individual cases brought to his attention concerned men. He had received very few communications concerning female genital mutilation, for example, which he would consider as torture or other cruel, inhuman or degrading treatment. Even when acts of torture were committed by non-State actors, if those acts were condoned by the State, there was deemed to be torture under article 1 of the Torture Convention. He hoped that more cases would be brought to his attention. His subsequent report would focus on gender-related practices, in particular traditional practices, such as genital mutilation and cases of corporal punishment such as the stoning of women for reasons of adultery, which amounted to torture or other cruel, inhuman or degrading treatment or punishment.

37. In reply to the representative of the European Union, he expressed concern that sufficient attention was not being paid to the terms of reference of fact-finding missions under Special Procedures. In his case those terms of reference included access to, and free movement around, all places of detention and the possibility of speaking in private to prisoners. He had regretted the last-minute cancellation of two fact-finding missions — one to Guantánamo Bay and one to the Russian Federation — because of lack of assurances from the respective Governments that those basic elements would be respected. He would be grateful if the European Union could convince other Governments that those terms of reference were sacrosanct and non-negotiable.

38. Turning to the issue of future cooperation with other human rights mechanisms and regional cooperation, he said it was important to apply the principle of subsidiarity: regional organizations were often in a better position to assess and monitor the situation in particular countries. However, it was necessary to avoid overlap and duplication between regional and international activities. With regard to the lack of response on the part of the majority of Governments regarding individual communications, he appealed to States to strengthen, as a matter of urgency, their cooperation with the Special Procedures. He

agreed with the representative of the Republic of Korea on the importance of the Universal Periodic Review, which should ensure non-selectivity in dealing with country situations. For it to be effective, however, it must be based on a clear division of labour between Governments' political bodies, on the one hand, and independent experts, on the other. He welcomed the commitment expressed by the representative of Georgia to the implementation of his recommendations, and ratification of the Optional Protocol, but shared her concern at the deteriorating situation in Abkhazia and South Ossetia and at the continued existence of the death penalty. He described his current activities in the area of regional cooperation, which was an important aspect of his mandate, and one to which the Third Committee might wish to give greater clarity in its respective resolutions.

39. **Ms. Halabi** (Syrian Arab Republic) said that it was important not to politicize issues such as the stoning of women for reasons of adultery, which was provided for by the Koran, providing certain conditions were met. She recalled that, in accordance with the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993, religious specificities must be borne in mind when promoting and protecting human rights.

40. **Mr. Chernikov** (Russian Federation) said that the lack of agreement regarding the terms of reference of the Special Rapporteur's visit to the Russian Federation had not emerged at the last minute and arose from their incompatibility with national laws, which must be respected. Under those laws, prisoners could not be visited without Court permission.

41. **Mr. Nowak** (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) agreed that the universality of human rights must be balanced with the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, which provided that national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind. That might apply to corporal punishment, for example. Stoning for reasons of adultery, however, was a clear violation of article 7 of the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as supported by abundant case law, discriminated against women and was never acceptable. It was not a matter of politicization but of international human rights law and he appealed to those States where the practice was still allowed to change their penal legislation.

42. With regard to his visit to the Russian Federation, he read out the relevant provision of the legislation concerning penitentiary institutions and their supervision, which explicitly provided for the possibility of representatives of international organizations authorized to supervise respect for human rights to visit — without permission — penitentiary institutions and pre-trial detention centres. That provision was already applied to other similar visits, such as those by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the United Nations High Commissioner for Human Rights and should similarly apply to the special procedures established by the Commission on Human Rights. He had been assured that the matter was being looked into and hoped to receive a positive response, enabling him to carry out his visit.

The meeting rose at 1 p.m.